No. 15,355

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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SHEET METAL CONTRACTORS ASSOCIATION OF SAN FRANCISCO, a Corporation, *et al.*,

*Appellants,*

*vs.*

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, *et al.*,

*Appellees.*

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**On Appeal From the United States District Court for the Northern District of California, Southern Division.**

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## BRIEF ON BEHALF OF APPELLEES.

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FILED
MAR 21 1957
PAUL P. O'BRIEN, CL

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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### Statement of the Case.

This case arises upon appeal [R. 50] "from the summary judgment denying an injunction entered in this action on September 27, 1956" by the United States District Court for the Northern District of California, Southern Division [R. 48-50], which is a final decision reviewable by this Honorable Court of Appeals under the provisions of 28 U. S. C. §1291.

Since, in our opinion, Appellants' statement of the case in its opening brief (pp. 1-4) does not completely nor in all respects accurately summarize the undisputed facts

disclosed by the record herein, and the argument set forth in Appellants' brief seeks to rely upon certain matters outside the record, Appellees herewith respectfully submit this further statement of the case for the consideration of the Court. (See Rule 18, subd. 3.)

### A. The Parties to the Case.

Plaintiffs and appellants consist of:

(1) *Sheet Metal Contractors Association of San Francisco,* agent and representative of plaintiff employers for purposes of collective bargaining with defendant Local Union No. 104 [Stipulation of Facts, Par. 2, R. 17], and;

(2) *28 San Francisco sheet metal contractors* who are and for several years have been members of said plaintiff association and parties to collective bargaining agreements with defendant Local 104. [Stipulation of Facts, Pars. 2 and 3, R. 17-18.]

With respect to these 28 alleged California corporations, co-partnerships, and individually-owned sheet metal contracting firms [see Complaint, Par. III, R. 6-7; Cf. Answer, Pars. III and IV, R. 12] constituting the plaintiff employers, it should also be noted that during the period here material *only eight* of them have carried on jobs in the Northern California Counties of Marin, Sonoma, Mendocino, Lake, Napa and Solano and made the questioned payments into the "Joint Industry Board Fund of the Heating and Sheet Metal Industry" of said Northern California Counties. [Stipulation of Facts, Pars. 9 and 11, R. 19-21; compare the Complaint, Third Cause of

Action, Par. II, R. 10.] These 8 directly-interested plaintiff contractors are:

(1) *Ace Sheet Metal Works* (Lloyd Hannan, Individual Owner)

(2) *Apex Sheet Metal Works* (Edwin Stevens, Individual Owner)

(3) *Gilmore Air Conditioning Service* (a California Corporation)

(4) *Western Heating & Plumbing Co., Inc.* (a California Corporation)

(5) *Atlas Heating & Ventilating Co., Ltd.* (a California Corporation)

(6) *Scott Co* (a Co-partnership consisting of W. W. Cockins, John L. McCabe and J. J. Nicholson)

(7) *Valley Sheet Metal Co.* (a Co-partnership consisting of Chas. F. Andrews and Edward E. Salomone)

(8) *Otis Sheet Metal Co., Inc.* (a California Corporation)

Defendants and Appellees consist of:

(1) *Sheet Metal Workers International Association;*

(2) *Local Union No. 104* of said International labor union, which maintains its principal offices in San Francisco, California, and is the collective bargaining representative of the journeyman sheet metal workers and apprentices employed by the plaintiff San Francisco sheet metal contractors. [Stipulation of Facts, Par. 2, R. 17; see also Complaint, R. 8 and Answer, R. 13.]

(3) *Local Union No. 75* of said International labor union, which maintains its principal offices in Vallejo, California, and is the collective bargaining representative of the journeymen sheet metal workers and apprentices employed by the Northern California Sheet Metal Contractors, doing business in the Counties of Marin, Sonoma, Lake, Napa and Solano and belonging to the Associated Heating and Sheet Metal Contractors, Inc., who are *not* parties to this action. [Stipulation of Facts, Pars. 4 and 6, R. 18-19; see also Complaint, R. 8, and Answer, R. 13].

(4) *Joint Industry Board of the Heating and Sheet Metal Industry of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties,* a joint trusteeship located at Vallejo, California, which was organized and established on or about June 10, 1955, pursuant to a written trust agreement as provided by a collective bargaining agreement between defendant Local 75 and the Associated Heating and Sheet Metal Contractors, Inc., representing the Northern California sheet metal contractors. [Stipulation of Facts, Pars. 4, 6, 7, and 8, R. 18-19; and Exs. "B" and "C" thereto, R. 26-41; see also Complaint, R. 8, and Answer, R. 13.]

(5) *W. R. White,* business representative of defendant Local 75. [Complaint, R. 9, and Answer, R. 13.]

**B. The San Francisco Sheet Metal Contractors' Agreement With Local 104.**

Under the terms of the valid standard form of collective bargaining contract executed on or about July 1, 1955, between the plaintiff Sheet Metal Contractors Association of San Francisco, acting on behalf of and as the agent of plaintiff employers, and defendant Local 104 [Stipula-

tion of Facts, Par. 3, R. 17-18; and Ex. "A" thereto, R. 21-25] plaintiff employers have agreed that—

> "[J]ourneymen sheet metal workers hired outside of the territorial jurisdiction of the Union to perform or supervise work outside the jurisdiction of the Union and within the jurisdiction of another Local Union affiliated with the Sheet Metal Workers International Association, shall receive the *wage scales and working conditions of the Local Union in whose jurisdiction such work is performed or supervised.*" (Art. VII, Sec. 3); and
>
> "When sent by the Employer to supervise or perform work . . . outside the jurisdiction of the Union and within the jurisdiction of another Local Union affiliated with Sheet Metal Workers International Association, journeymen sheet metal workers covered by this Agreement shall be paid . . . in no case less than *the established wage scale of the Local Union in whose jurisdiction they are employed* . . . *and* the Employers shall be otherwise governed by *the established working conditions of said Local Union.* . . . " (Art. VII, Sec. 4.) [R. 23-24; emphasis added.]

**C. The Joint Industry Board Fund for Other Northern California Counties.**

Pursuant to a valid collective bargaining agreement executed on or about June 10, 1955, between various employers, *other than plaintiffs,* doing business as sheet metal contractors in the Counties of Marin, Sonoma, Mendocino, Lake, Napa and Solano, California, represented by the Associated Heating and Sheet Metal Contractors, Inc., and defendant Local No. 75 [Stipulation of Facts, Par. 4, R. 18; and Ex. "B" thereto, R. 26-29] there has been

created the "Joint Industry Board," defendant herein, *composed of an equal number of employer and union trustees,* who function pursuant to a formal "trust agreement." [Stipulation of Facts, Pars. 6-8, incl., R. 18-19; and Ex. "C" thereto, [R. 29-41.]

The purposes and functions of this Joint Trusteeship as specified in the trust instrument are—

(1) "To *supervise, administer and carry out all funds* provided for by the Bargaining Agreements except the Health & Welfare Fund. . . ."

(2) "To aid in the *settlement of any and all disputes* of any nature" between "the Union, its members, agents and/or representatives" and the Employers' Association, its members, and all other signatory employers.

(3) "To set up and administer a *joint arbitration committee* and to provide *further arbitration procedures.* . . ."

(4) "To supervise and administer a *joint apprenticeship program.* . . ."

(5) "To *assist and aid the Heating and Sheet Metal Industry in continuing the high degree of skill it now enjoys";* to provide a *forum for Management-Labor discussion* and cooperation; to *effectuate high standards in the Industry,* etc.

(6) To *meet with representatives of public, quasi-public and allied private bodies or groups; "promote beneficial legislation";* and to *"foster good public relations,"* etc. . . . [Restraints of trade and political activities are expressly prohibited.] [R. 30-31; emphasis added. See also Mem. Op. of Dist. Ct., R. 43-44.]

These lawful, mutually beneficial and obviously socially desirable activities of the Joint Industry Board (see *Bay Area Painters Joint Committee v. Orack* (1951), 102 Cal. App. 2d 81, 226 P. 2d 644) are financed by the employers' monetary payments into the trust fund of 2½¢ for each hour worked by each employee covered by the Bargaining Agreement, pursuant to Section 19-A of the contract and Section Q of the trust agreement. [Stipulation of Facts, Par. 10, R. 20; and Exs. "B" and "C" thereto at R. 28 and R. 40-41 respectively.]

**D. The Questioned Payments by 8 San Francisco Contractors to the Trust Fund of the Joint Industry Board of the Heating and Sheet Metal Industry of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties.**

Between July 1, 1955, and June 22, 1956, eight of the plaintiff employers (*Ace; Apex; Gilmore; Western Plumbing; Atlas; Scott; Valley Sheet Metal, and Otis*) "have carried on jobs" in the above named six counties, "employing on such jobs sheet metal workers who were members of defendant Local No. 104." [Stipulation of Facts, Par. 9, R. 19-20.]

By its June 10, 1955, collective bargaining agreement [Stipulation, Ex. "B"; R. 26-29] defendant Local 75, a sister local affiliated with the defendant Sheet Metal Workers International Association, had previously established wage scales and working conditions in said six counties which these 8 San Francisco contractors agreed to observe under the terms of their July 1, 1955, contract with

the representative of their employees, Local 104, as pointed out above. [Stipulation, Ex. "A," Art. VII, R. 23-24.]

Between October 13 and December 15, 1955, defendant Local No. 75 "threatened to encourage, cause and induce the employees" of these 8 San Francisco contractors performing jobs in the six-county area to quit work, unless said contractors observed the locally established employment conditions by contributing to the Joint Industry Board Fund the sum of 2½¢ for each hour worked in said Counties. Thereafter, said 8 San Francisco contractors complied with Local 75's demand for such contributions to the joint trust fund and have continued to do so. [Stipulation of Facts, Pars. 10-11, R. 20-21.]

**E. The Proceedings in the District Court.**

On January 19, 1956, the San Francisco Sheet Metal Contractors Association and numerous individuals, partnerships and corporations constituting 28 sheet metal contracting companies belonging to that employers' association, plaintiffs and appellants herein, filed the instant complaint with the District Court [R. 3-11] seeking an injunction against *all* defendants and appellees *"under the provisions of Section 302, subdivisions (a) and (b)* of the *Labor Management Relations Act 1947 as amended (29 U. S. C. Section 186)."* [Complaint, Par. I, R. 5.]

By such complaint, said plaintiffs sought to invoke the jurisdiction conferred upon said Honorable United States District Court by *Section 302(e) of the Taft-Hartley Act,*

*29 U. S. C. §186(e),* [Complaint, Par. II, R. 6], to obtain a judgment and decree—

> (1) enjoining and restraining "defendants and each of them" from "causing or attempting to cause plaintiffs or any of them to pay any money or thing of value to defendants JOINT INDUSTRY BOARD and/or LOCAL UNION No. 75";
>
> (2) enjoining and restraining "defendants JOINT INDUSTRY BOARD and LOCAL UNION No. 75 and each of them" from "receiving or accepting any money or thing of value from plaintiffs";
>
> (3) ordering and directing the "defendant JOINT INDUSTRY BOARD" to "repay and return all monies or things of value paid or delivered to defendants by plaintiffs or received and accepted from plaintiffs." [Complaint, Prayer, R. 11.]

On April 12, 1956, defendants duly filed their *"Answer to Complaint"* herein. [R. 11-15.] Thereafter, on June 22, 1956, all parties entered into a *"Stipulation of Facts"* [R. 16-21] for the purpose of enabling the District Court to pass upon plaintiffs' and defendants' respective motions for summary judgment. [R. 42 and R. 15-16.]

The legal issues thus placed before the District Court for decision by the above-mentioned pleadings and stipulated facts may be briefly summarized as follows:

1. Were any of the plaintiffs an *"employer" of "employees who are employed in an industry affecting commerce"* within the meaning of Section 302 of the Taft-Hartley Act?

2. In the case of any such plaintiff employer, were any of the defendants a *"representative of any of his*

*employees"* within the meaning of Section 302 of the Taft-Hartley Act?

3. Had any such defendant "representative" of any employees of any such plaintiff employer violated or attempted to violate Section 302 of the Taft-Hartley Act which makes it "unlawful for any *employer* to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any *representative of any of his employees*" and "for any *representative of any employees* . . . to receive or accept or to agree to receive or accept from the *employer of such employees* any money or other thing of value"?

Declaring that, under the circumstances of this case, it "cannot hold that the payments in question are payments 'to any representative' " and further that the "union members of the Joint Industry Board, in that capacity, are not 'representatives' of the employees within the meaning of 29 U. S. C. 186" [R. 48], the District Court denied plaintiffs' motion for summary judgment, granted defendants' motion for summary judgment, and dismissed the complaint for injunctive relief. [R. 49.]

## ARGUMENT.

### Introduction and Summary of Argument.

Section 302 of the Labor Management Relations Act does not prohibit any payments other than those between an "employer" and "any representative of any of his employees" in an industry affecting commerce.

The only appellant employers making the questioned payments herein were eight San Francisco sheet metal contractors employing members of Local 104 in the Northern California counties.

The only recipient of the questioned payments was the Joint Industry Board trust fund established by agreement between other Northern California contractors and Local 75.

The District Court correctly held that the questioned payments by these eight appellant employers into the Joint Industry Board trust fund did not constitute payment of "any money or other thing of value" to any "representative" of their employees in violation of Section 302.

Since the payment or delivery of such sums by these 8 appellant employers to the Joint Industry Board trust fund did not violate Section 302(a) and the receipt or acceptance of such sums by the appellee Joint Industry Board did not violate Section 302(b), and therefore such payments did not constitute a crime made punishable by Section 302(d), no jurisdiction existed to grant any injunction against such payments by virtue of Section 302(e) and equity jurisdiction was precluded by the Norris-LaGuardia Act (129 U. S. C. §§101-115).

## I.

## Section 302 Only Prohibits Payments Between an "Employer" and "Any Representative of Any of His Employees" but Not Payments to Others.

### A. The Statutory Language.

Paragraphs (a) and (b) of Section 302 in substance make it unlawful for *"any employer of such employees"* to offer or *"any representative of any of his employees who are employed in an industry affecting commerce"* to accept from *"the employer of such employees"* money or other valuables, except in the five instances set forth in Paragraph (c), *i.e.,* (1) compensation for services as an employee of such employer; (2) satisfaction of a judgment, arbitration award or disputed claim without fraud or duress; (3) purchase price for goods regularly sold; (4) properly checked-off union dues; and (5) payments to jointly-administered trust funds to provide health and welfare, pensions, or other specified benefits to employees and their families and dependents. (The pertinent parts of the statute are set forth in full text by the opinion of Mr. Justice Clark in *United States v. Ryan* (1956), 350 U. S. 299 at p. 303, footnote 4.)

Section 302(d) makes such practices criminal and punishable by fine and imprisonment, on the part of both *employers* and *employee representatives.* (29 U. S. C. §186(d); *Ryan* case, *supra,* 350 U. S. at p. 306.)

Appellants herein have thus doubly noted (App. Op. Br. pp. 7 and 27) the Supreme Court's observation in the *Ryan* case, 350 U. S. at p. 305, that—

> "As the statute reads, it appears to be a criminal provision, malum prohibitum, which outlaws all payments, with stated exceptions, between *employer* and *representative.*" (Emphasis supplied.)

Section 302(e) confers upon the United States District Courts "jurisdiction for cause shown . . . to restrain violations of this section." (29 U. S. C. §186(e)), so that "beyond the penalties which are purely criminal there could be injunctive powers for quick and speedy remedy." (*Dunbar Co. v. Painters and Glaziers District Council* D. C. (Dist. Col., 1955), 129 Fed. Supp. 415.)

Examination of the face of the statute discloses that Section 302(a), (b) and (c) contain "a *highly specialized restriction* on the legality of employers' agreements to make payments to employee representatives" (see *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.* (1955), 348 U. S. 437, footnote 2 of opinion); Section 302(d) imposes *criminal penalties* which "should be construed most favorably to those charged with having violated its provisions," (*In re Feller,* 82 N. Y. S. 2d 852); and Section 302(e) constitutes a "very narrow opening in the theretofore solid wall of denial of power of *injunction* in cases of labor disputes." (*Dunbar Company* case, *supra,* 129 Fed. Supp. 417.)

Despite these punitive and restrictive aspects of the legislation, which under ordinary principles of statutory interpretation would require that Section 302 be strictly construed, appellants herein rely upon the *Ryan* decision, *supra,* to urge that the "statute should be *liberally* construed to effectuate its purpose" and also that the "decision in this case should be governed not by form but by substance." (App. Op. Br. pp. 26-27.) Apparently, appellants thus seek to persuade this Honorable Court of Appeals to disregard the plain language of the statute.

The specific question decided by the *Ryan* case was that payments to the president and principal negotiator

of a labor union *"individually"* were payments to a "representative" of employees within the meaning of Section 302(b). In concluding that the statutory term "any representative of any employees" placed the identical limitations on both individuals and organizations, the Supreme Court emphasized "the precise words of the statute," "their literal meaning," "the legislative history" and "the structure of the section." (350 U. S. at pp. 302 and 305.) The "narrow reading of the term 'representative' . . ." which the Supreme Court rejected because it "would substantially defeat the Congressional purpose" (350 U. S. at p. 304) was a "technical meaning" limited to the "exclusive bargaining representative" of the employees, which in that case was the union itself (350 U. S. at pp. 301 and 305) which would have excluded payments made *directly* to union officials or to other individuals as trustees for the union from Section 302.

On the other hand, Justice Clark, speaking for a unanimous Court, make it quite clear that, in holding that ILA International President Ryan's "relationship brings him within that term" so that *"payments to Ryan individually"* were covered, "We do not decide whether any official of a union is ex officio a representative of employees under Section 302." (350 U. S. at p. 301.)

The District Court herein had before it the opinion of the Supreme Court in the *Ryan* case, decided February 27, 1956, when the instant case was argued on July 9th and decided on August 16, 1956. [R. 48.] The court below properly concluded that the *Ryan* decision did not warrant an enlargement of the scope of Section 302 beyond its precise terms [see *United Marine Division v. Essex Transportation Co.* (C. A. 3rd, 1954), 216 F. 2d

410, cited and quoted at R. 45-46], especially since "[g]rammar, the customary use of words, common sense and the legislative history of the Act all require the interpretation" finally adopted by the District Court herein. [See *Upholsterers' International Union v. Leathercraft Furniture Co.* (E. D. Pa., 1949), 82 Fed. Supp. 570, cited and quoted at R. 47.]

**B. The Legislative History.**

Appellants insist that Section 302 was adopted "for the specific purpose of *forbidding* any payment into any funds wholly or partially controlled by unions" except jointly-administered welfare funds for the exclusive benefit of employees with their detailed benefits specified by a written agreement, as provided by Section 302(c)(5). (App. Op. Br. p. 8, *Ibid.,* pp. 23-24 and 27.)

The legislative history of Section 302, as analyzed by the Supreme Court in the *Ryan* case, *supra,* makes it clear that in this portion of the legislation, Congress was *not* aiming solely at the welfare fund problem. By "writing a broad prohibition in subsections (a) and (b) and five specific exceptions thereto in subsection (c), only the last of which covers welfare funds," Congress enlarged the scope of this section when the Hartley bill reached the Senate "to include, in the words of Senator Taft, 'a case where the union representative is shaking down the employer. . . .' 93 Cong. Rec. 4746. . . ." (350 U. S. at pp. 304-306.)

It is true that when Congress passed the forerunner of Section 302 in the Case Bill at the previous session in 1946 (H. R. 4908, 79th Cong., 2nd Sess.), it "was disturbed by the demands of certain unions that the em-

ployers contribute to 'welfare funds' which were in the *sole control of the union or its officers* and could be used as *the individual officers* saw fit . . .", *e.g.* the United Mine Workers' 10¢-per-ton fund for "so-called welfare purposes." (350 U. S. at p. 304; emphasis added; *Senate Report No. 105 on S. 1126,* [*Supplemental Views of Senators Taft et al.*], p. 52, quoted in App. Op. Br. at pp. 8-9; *Statements of Senators Ball and Byrd,* 93 Cong. Rec. 4678, *Statements of Senator Taft,* 93 Cong. Rec. 4746-4747, quoted in App. Op. Br. at pp. 9-12.)

The Hartley bill (H. R. 3020, 80th Cong., 1st Sess.) as reported in the House of Representatives on April 11, 1947, would have made it "an unfair labor practice for an employer . . . to dominate or interfere with the . . . administration of any labor organization . . . by *assisting any labor organization* . . . through making *payments of any kind* to such organization *directly or indirectly,* or to *any fund or trust established by such organization,* or to *any fund or trust* in respect of the management of which, or the disbursements from which, *such organization can, either alone or in conjunction with any other person, exercise any control, directly or indirectly.*" (Sec. 8(a)(2)(C)(ii); emphasis added.) It also prohibited an employer from "giving, or offering to give any reward, favor or other thing of value to any person in a position of trust in such [labor] organization for the purpose of perverting his judgment or corrupting his conduct in respect to such organization." (Sec. 8(a)-(2)(B).)

Thus, the House bill was drafted to "forbid employers to pay to or for unions, or to any *funds established, maintained or controlled by them in whole or in part, directly*

*or indirectly,* royalties, taxes, or other exactions, instead of paying the money directly in the form of wages" and to prohibit "an employer's . . . bribing a union official, directly or indirectly." (*House Report No. 245 on H. R. 3020,* 80th Cong., 1st Sess., p. 29; emphasis added.)

The Minority Report of the House Committee on Education and Labor strongly objected to the provisions of Section 8(a)(2)(C)(ii) of the Hartley Bill as reported by the majority of the Committee (*Ibid.,* pp. 78-79), declaring in part—

> "We would have no objection to requiring that trust funds to which an employer makes contributions be *jointly controlled* by the employer and the union but under this bill an employer would be forbidden to contribute to *any fund over which the union has any control even though it is jointly administered with the employer.* This result is completely unreasonable." (Emphasis added.)

"As passed by the House of Representatives," on April 17, 1947, with Sections 8(a)(2)(C)(ii) and 8(a)(2)(B) intact, "the Hartley Bill forbade employer contributions to union welfare funds and made it an unfair labor practice to give favors to 'any person in a position of trust in a labor organization.'" (*United States v. Ryan, supra,* 350 U. S. at p. 305.)

If the House version had been finally enacted into law, Appellants would be correct when they state that "the legislation embodied in Section 302" contained a general prohibition against "any payments into any *funds wholly or partially controlled by unions"* or that "Congress in enacting Section 302 intended to forbid payments by employers into *funds even though jointly controlled by*

*employers and representatives of their employees."* (App. Op. Br. pp. 8 and 12; emphasis added.)

The fact is, however, as recognized by the Appellants herein (App. Op. Br. p. 18) that the House provisions relating to restrictions on payments to employee representatives and union trust funds were rejected in the Senate. In their place, an amendment offered by Senator Ball of Minnesota on May 7, 1947 (93 Cong. Rec. 4677) was adopted on the day following (93 Cong. Rec. 4755) as a new Section 302 of the Taft-Bill (S. 1126, 80th Cong., 1st Sess.).

The Joint Conference Committee substituted "the provisions of the Senate amendment with minor clarifying changes" for Sections 8(a)(2)(B) and (C) of the House version. (*House Conf. Rept. No. 510,* 80th Cong., 1st Sess., p. 67.)

Among these changes in the final legislation made by the Joint Conference Committee was the elimination of Sections 302(g) of the Senate version which defined *"representative"* for the purposes of Sections 301 and 302 of the Act.

Had the Joint Conference Committee adopted the broadest definition of "representative" in Section 302(g) of the Senate version—so as to include *"any organization or fund of which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative"* (93 Cong. Rec. 4677)—Appellants might have found some support for their bare assertion that the "Joint Industry Board Fund here involved is exactly the type of fund Congress intended to prohibit by Section 302" (App. Op. Br. p. 12). But this enlarged definition of "representative" was eliminated from

Section 302 when the "Joint Conference Committee substituted for it the definition of that term in the NLRA, as amended." (*United States v. Ryan, supra,* 350 U. S. at p. 306; see also at p. 301; both citing Sec. 501(3) of the Labor Management Relations Act.)

The term "representative" in Section 302 thus includes any individual or labor organization "authorized by the employees to act for them in dealings with their employers" concerning "employment matters." (350 U. S. at pp. 302 and 306.) Congress expressly declared in Section 501 of the Labor Management Relations Act, entitled "DEFINITIONS," that, "When used in this Act . . . [t]he term . . . 'representative' shall have the same meaning as when used in the National Labor Relations Act as amended by this Act."

As the Solicitor of the United States Department of Labor expressed it, when commenting upon "the limited meaning of the term indicated by the legislative history" (*Memorandum Opinion from the Solicitor to the Secretary of Labor,* dated December 10, 1948, quoted in full text in the *Report of the Joint Committee on Labor-Management Relations,* S. Rept. No. 986, Pt. 3, 80th Cong., 2nd Sess., p. 109):

> "In using the term 'representative' in section 302, it is, of course, clear that Congress had unions or union agents foremost in mind."

In reaching this conclusion, the Solicitor relied upon the Senate debates wherein Senators Ball and Byrd (93 Cong. Rec. 4678) as well as Senator Taft (93 Cong. Rec. 4748) described the specific purpose of Section 302.

A similar conclusion was reached by the Chief of the General Crimes Section of the United States Department

of Justice (*Testimony of Rex A. Collings, Jr.,* July 20, 1955, in *Senate Labor Committee Hearings on Welfare & Pension Plan Investigation* (1955), pp. 902-904), who rendered the opinion that—

> ". . . Section 302 only prohibits payments by an employer to representatives of his employees which do not fall within certain exceptions. It does not prohibit payments to others. . . ."

The Justice Department official cited as authority for his opinion the decisions in *Rice-Stix Co. v. St. Louis Health Institute* (E. D. Mo., 1948), 22 L. R. R. M. 2528, and *United Marine Division v. Essex Transportation Co., supra* (C. A. 3rd, 1954), 216 F. 2d 410, which latter case quotes at length from the legislative history of Section 302 (*e.g., Statements of Senators Ball and Byrd,* 93 Cong. Rec. 4678, and *Statements of Senator Taft,* 93 Cong. Rec. 4746-4747.)

"Although a 1948 committee report is no part of the legislative history of a statute enacted in 1947," the majority opinion of the Chief Justice in one of the latest decisions of the Supreme Court dealing with the interpretation of the Taft-Hartley Act (*N. L. R. B. v. Lion Oil Co.*, 352 U. S. ....., 1 L. ed. (2d) 331, 338-339, decided January 22, 1957) notes the special significance of conclusions reached as to the meaning of the statute in the final report of "the Joint Committee on Labor Management Relations, made up of members of the Congress which passed the Taft-Hartley Act" (S. Rept. No. 986, Pt. 3, 80th Cong., 2nd Sess.) and in the minority report submitted in 1949 by Senator Taft, "who was a member of the Joint Committee." (S. Rept. No. 99, Pt. 2, 81st Cong., 1st Sess.) The separate opinion of Mr. Justice Frankfurter (1 L. ed. (2d) at p. 343) in that same

case likewise cites the 1948 Report of the Joint Committee and the 1949 Minority Report of the Senate Labor Committee as "persuasive evidence" of "a reasonable interpretation of what the Taft-Hartley Congress legislated."

With respect to *"employee representatives"* under the *"Restrictions Provided in Section 302 of the Act,"* the Joint Committee of Congress created by the very act of which that section was a part to study the operation of the Federal labor laws, recorded the following instances in which the view "has already been adopted" that if the parties to a "trust fund established by collective bargaining agreement" provide for payments to trustees selected by them "then no portion of section 302 applies because the payments are not being made to a representative of the employees":

> (1) "on December 13, 1948, when the Attorney General concurred in an opinion of the Solicitor of the Department of Labor";
>
> (2) "the original neutral trustee for the miners' fund expressed his opinion that that fund was not subject to the restrictions of section 302 because the employer contributions were not made to an employee representative but to trustees."
>
> (3) "In *Rice-Six Dry Goods Co. v. St. Louis Labor Health Institute* (22 LRRM 2528, U. S. Dist. Ct., E. D. Mo., 1948), the court held that a welfare plan was not subject to the restrictions of section 302 of the Act. In this case the officers of the union had organized a corporation devoted to charitable, religious, scientific and benevolent purposes. The union and the employer entered into a collective bargaining agreement whereby the employer agreed to make payments for the benefit of his employees to the charitable corporation. . . .

> "The court ruled that such payments could lawfully be made for the reason that the charitable corporation was not a representative of any employees of the plaintiff as set forth in section 302 of the Labor Management Relations Act, 1947 and that the 'management and funds of the St. Louis Health Institute are not under the control of' the union. . . . [I]t appears from the record itself that the top officers of the union not only organized the charitable corporation but were the president and sceretary-treasurer of it." (Senate Rept. No. 986, Pt. 3, 80th Cong., 2nd Sess., pp. 97-99.)

The final report of the Joint Committee (which went out of existence as provided by statute on March 1, 1949) recommended that "serious consideration should be given by Congress to an amendment" containing "clear and unmistakeable language to the effect that no money may be paid to any trust fund which is the subject of collective bargaining except in accordance with the limitations enumerated in section 302(c)(5)." (*Ibid.*, pp. 98-99.)

If Appellants were correct in their contention (App. Br. pp. 7 and 27), that the statute already condemns payments by employers to jointly-administered trust funds established by collective bargaining "however laudable their purpose might be" and "however carefully administered and audited" if "the fund is to be used for purposes jointly agreed upon by the union and the employers which are not purposes specified and permitted by Section 302" [*i.e.*, in §302(c)(5)] such an amendment would not be necessary as that proposed in 1948 by the Joint Committee to the standing committees of the Congress dealing with Labor-Management problems, or by other legislative proposals discussed below.

In making its recommendation to the Senate Committee on Labor and Public Welfare and the House Committee on Education and Labor, for an amendment to overcome the above-mentioned "interpretations of the restrictions" of Section 302 (Senate Rept. No. 986, Pt. 3, 80th Cong., 2nd Sess., p. 7), the Joint Committee submitted therewith its "findings" (*Ibid*, p. 5) to the effect that these "provisions of the Act dealing with union welfare funds are inadequate in many respects, and the whole subject requires further study, with probably a much more fundamental regulation"; that "Section 302 was written largely to prevent the payment into welfare funds of moneys . . . often completely at the disposition of the officers of labor unions"; and finally, that the "developments" concerning interpretation of the term "employee representatives" "may permit circumvention of all the Act's restrictions by . . . contributions to an intermediary."

At the next session of Congress, proposed amendments to various provisions of the Taft-Hartley Act, including Section 302 failed of adoption. (S. 249, 81st Cong., 1st Sess.) During the legislative proceedings, however, Senator Taft and other minority members of the Senate Committee on Labor and Public Welfare submitted a report which quoted with approval from the 1948 "findings" of the Joint Committee on Labor-Management Relations and stated (Senate Rept. 99, Pt. 2, 81st Cong., 1st Sess., pp. 49-50; emphasis added):

> "The Taft-Hartley Act prohibited *employer payments to union representatives*. . . . It was first considered at a time when a dispute was in progress in the coal industry over a demand for a welfare fund *payment directly to the union*. . . . It has no doubt,

> actually promoted such funds by keeping them respectable and not subject to *racketeering or arbitrary dispensation by union officers.*"

Both the contemporary and the subsequent legislative history of Section 302 reflect that it was "a stop gap provision until a further study can be made, in order that abuses may not arise." (*Remarks of Senator Taft,* 93 Cong. Rec. 4747; see also S. Rept. 986, Pt. 3, 80th Cong., 2d Sess., p. 5; Senate Rept. 99, Pt. 2, 81st Cong., 1st Sess., p. 49.)

Since March of 1949, when the Joint Committee on Labor-Management Relations created by the Taft-Hartley Act went out of existence, various sub-committees of the Congressional standing committees on labor relation matters have conducted such further studies of the problems of health, welfare and pension funds established through collective bargaining.

In May of 1954, such an investigation was commenced by the Subcommittee on Welfare and Pension Funds of the Senate Committee on Labor and Public Welfare under the chairmanship of Senator Ives of New York. (S. Res. 225, as amended, 83rd Cong., 2nd Sess.) On February 5, 1955, further inquiry was authorized by this Subcommittee under the chairmanship of Senator Douglas of Illinois (S. Res. 40, 84th Cong., 1st Sess.) and later extended. (S. Res. 200 and S. Res. 232, 84th Cong., 2nd Sess.)

As mentioned above, Rex A. Collings, Jr., Chief of the General Crimes Section of the United States Department of Justice testfied before the Douglas Subcommittee on Welfare and Pension Funds on July 20, 1955, regard-

ing the interpretation of Section 302. (*Hearings on Welfare & Pension Plan Investigation,* pursuant to S. Res. 40 as extended by S. Res. 200 and S. Res. 232, 7/20/55, pp. 902-904.)

After explaining that Section 302 does not prohibit payments made by an employer to others than "representatives of his employees," the Justice Department official expressly advised the Senate Subcommittee of his belief that—

> "There is some doubt that the section prohibits payments to a board of trustees composed of representatives both of employer and employees, even if not set up for a purpose permitted by the section. . . . In our opinion section 302(c)(5) is not a penal clause. It does not of itself make any act or omission a criminal offense."

Legislation was thereafter proposed by the Douglas Subcommittee to require registration, reporting, and full disclosure of the administrative details of all major health, welfare and pension plans, including jointly-administered trust funds. (S. 3873, 84th Cong., 2d Sess.)

As noted by the final report of the Douglas Subcommittee to the full Senate Committee on Labor and Public Welfare of the 84th Congress, filed on April 6, 1956 (pp. 77-81), three other bills of a similar nature were also introduced in the 84th Congress. (S. 1717, 84th Cong., 1st Sess., by Senator Humphrey of Minnesota; S. 3051, 84th Cong., 2d Sess., by Senators Ives of New York and Allott of Colorado; and H. R. 2132, 84th Cong., 1st Sess., by Representative Gwinn of New York.)

The last mentioned Gwinn bill, originally introduced in the 83rd Congress, 2d session, as H. R. 9705, proposed

specific amendments to Section 302 of the Taft-Hartley Act by which the *"Prohibitions already in parts (a) and (b) of section 302,* making unlawful payments by an employer to a representative of his employees, and the receipt of such payments by a representative [would] have been *enlarged to preclude payments to, or receipt by, any fund of which the representative is an officer, director, trustee or administrator."* (Douglas Subcommittee Report, 4/6/56, p. 78; emphasis added.)

During 1956, the Permanent Subcommittee on Investigations of the Senate Government Operations Committee under the chairmanship of Senator McClellan of Arkansas, began a study of alleged criminal and corrupt practices with respect to welfare funds and other matters by certain few union and management organizations.

On January 30, 1957, the Senate established a Select Committee to Investigate Improper Practices in the Labor-Management Field, also under the chairmanship of Senator McClellan, which is currently conducting hearings relating to alleged "racketeering," including charges of maladministration of particular welfare funds.

Bills requiring registration, reporting, and disclosure by welfare and pension funds, including those jointly-administered by Labor and Management, have been introduced into the present Congress by Senators Douglas (S. 1122, 85th Cong., 1st Sess.) and Ives (S. 1145, 85th Cong., 1st Sess.).

To date, however, the language of Section 302 has not been altered by Congress and remains in its original form as first adopted over the Presidential veto on June 23, 1947. None of the bills mentioned above, including those specifically amending Section 302 to achieve the

result sought by Appellants herein, were ever enacted into law. The Act still is limited to a general prohibition against payments to employee "representatives" in Section 302(a) and (b) and does *not* make payments to a Joint Labor-Management Trust Fund illegal *per se* because it does not comply with Section 302(c)(5).

### C. The Congressional Purpose.

Appellants have selected certain partial quotations from the legislative history of Section 302(c)(5), (App. Op. Br. pp. 8-12; 18; 22, quoting from *Legislative History of Labor Management Relations Act, 1947*, pp. 458, 1304 and 1310-1313), to support their contention that Section 302 *in its entirety* was adopted "for the specific purpose of *forbidding* any payments into funds wholly or partially controlled by unions except funds for the exclusive benefit of employees with their benefits clearly specified."

Judicial examination of the legislative history of the *entire* Section 302 in previous cases demonstrates the fallacy of this argument as to the actual legislative intent.

The language of Section 302 "was very deliberately intended to prevent kickbacks, prevent bribes, prevent things that make for labor racketeering." (*Dunbar Co. v. Painters and Glaziers District Council No. 51, supra*, (D. C. Dist. Col., 1955), 129 Fed. Supp. 417.)

The constitutionality of Section 302 rests upon the Congressional power to "curb adequately the evils of extortion and bribery" and "avoid transactions which may give rise to conflict of interests between the employer and employee representation." It thus represents an exercise of Congressional jurisdiction over "[p]ractices which are

wrong and harmful to labor-management relations and inimical to public welfare and those which are potentially wrong in that field." (*United States v. Connelly* (D. C. Minn., 1955), 129 Fed. Supp. 786.)

In the *Essex Transportation Company* case, *supra* (C. A. 3rd, 1954), 216 F. 2d 410, construing and interpreting Section 302 "as a question of law only," Circuit Judge Goodrich stated for a unanimous court that—

> "We think that in this instance the promise of the employer . . . was not a promise 'to any representatives of any of his employees.' The promise alleged was to pay these trustees. These trustees were not in our opinion representatives of the employees. They were trustees of a welfare fund. *It is true they were chosen half and half by the employers' association and this union. But we think that when set up as a board, as they were in this case, these individuals are not acting as representatives of either union or employers.* They are trustees of a fund and have fiduciary duties in connection therewith as do any other trustees. The terms under which they act were carefully spelled out.
>
> "We think that the promise in *this case is outside the evil which the Congress was endeavoring to erase* in the sections of the statute which we have quoted. Since the fact situation is outside that evil, we do not think we should enlarge an applicaion of the statute to void this type of arrangement which has met with legislative sanction, judicial approval, and is a growing trend in employer-employee relations." (Emphasis added.)

Joint Labor-Management trust funds were there said to be "a social device to be encouraged." (See also *Upholsterer's International Union v. Leathercraft Furniture*

*Company* (D. C. Pa., 1949), 82 Fed. Supp. 570; *Van Horn v. Lewis* (D. C. Dist. Col., 1948), 79 Fed. Supp. 541; *United Garment Workers v. Jacob Reed's Sons* (D. C. Pa., 1949), 83 Fed. Supp. 49; *In re Feller, supra.*)

While in the *Essex* case, the fund in question was a pension trust fund, the District Court in the instant case properly held [R. 46] that *"the rationale of the Essex case seems to be equally applicable here"* since the "Joint Industry Board will hold the funds in question in trust for the purposes enumerated in the Trust Agreement" which tend to promote the socially-desirable objectives of industrial peace, increased productivity, and economic betterment of both employers and employees. (See *Bay Area Painters and Decorators Council v. Orack, supra,* 102 Cal. App. 2d 81.)

The legislative history of Section 302 quoted at length in the *Essex Transportation Company* opinion clearly demonstrates that the purpose of the amendment was not to prohibit such funds, as Appellants contend (App. Br. p. 12), "but to make sure that they are legitimate trust funds" and "that they shall not degenerate into bribes" or "a war chest for the particular union" or a "fund to be controlled exclusively by the labor union."

Section 302 "makes extortion illegal" and "proceeds on the theory that union leaders should not be permitted . . . to divert funds paid by the company, in consideration of the services of employees, to the union treasury or the union officers . . .", that is to say "such funds . . . agreed upon by collective bargaining . . . should not be subject to racketeering or abitrary dispensation by union officers." (Senate Rept. No. 105, 80th Cong., 1st Sess., p. 52.)

As Senator Taft himself indicated (93 Cong. Rec. 4746) "the legislation was occasioned by alleged efforts by John L. Lewis of the United Mine Workers of America to build up a tremendous fund in the hands of the officers of the labor union . . . which they may use indiscriminately," and "the purpose of the provision" was to prevent the creation of such a fund "in the sole discretion of the union or the union leaders and useable for any purpose which they may think is to the advantage of the union or the employee." Quoting the specific language of Section 302(a), Senator Taft defined the proscribed payments to employee representatives as "a case of extortion or a case where the union representative is shaking down the employer." (*Ibid.*)

The substantive evil sought to be remedied by Section 302 was thus defined by Senator Ball as the "very grave danger that the funds will be used for the personal gain of union leaders, or for political purposes, or other purposes not contemplated when they are established, and that they will become rackets." (93 Cong. Rec. 4678.) "The specific purpose" as defined by Senator Byrd was "to prohibit labor unions from requiring welfare funds to be paid into the treasuries of the labor unions" and contemplated that "the money shall go to a trust fund that shall be mutually administered by the employer and the employee."

The findings of the District Court with respect to the circumstances of this case which are amply supported by the stipulated facts, were that—

> (1) "The Joint Industry Board will hold the funds in question in trust for the purposes enumerated in the trust agreement." [R. 46.]

(2) "The Board consists of six members for the employers and six members for the union. Decisions of the Board are made by a concurrence of a majority of the employer members with a majority of the union members. . . . [T]he power to expend the funds contributed by the employers, resides in the Board, and is thus dependent upon the approval of the employer members." [R. 43.]

(3) "The Joint Industry Board is not a part of the union, and its governing agreement expressly provides for the separate character of the Board from either of the parties and expressly preserves their duties and relationships with respect to each other and each of them with respect to their members. The agreement provides for a careful accounting and separate deposit system for Joint Industry Board funds from those of the union. If the employer members refuse to sanction an expenditure, for any reason, there is a provision for arbitration in the agreement." [R. 47-48.]

The District Court herein properly found that it was the "purpose of Congress to prevent misuse of funds, and the possibility of the concealment of bribes and extortions in the form of payments by Employers to labor representatives" [R. 45] and that the Joint Industry Board Fund was not established nor operated contrary to such legislative aim.

There is no evidence or contention in this case that "the trustees use, or attempt to use, directly or indirectly, the fund for a purpose" not authorized by the Trust Agreement of the Joint Industry Board or are "burdening the fund with undue administrative expenses or lush salaries for union officials," nor do Appellants seek to "enjoin the trustees from making . . . improper ex-

penditures." [See *Upholsterers' International Union v. Leathercraft Furniture Co., supra,* 82 Fed. Supp. at p. 573, quoted at R. 47.]

Since in the present case, as in the *Essex Transportation Company* case, the fact situation is outside the evil which Congress was endeavoring to reach, the application of the statute should not be *enlarged* to void the Joint Industry Board Fund here involved.

## II.

## Eight San Francisco Sheet Metal Contractors Employing Members of Local 104 in the Northern California Counties Were the Only Appellant Employers Making the Questioned Payments.

The First Cause of Action of the Complaint herein alleged that "Defendants are attempting to cause and compel plaintiffs to pay and deliver money and other things of value to defendant Joint Industry Board." [Complaint, R. 9.]

The Second Cause of Action alleged that "Defendants are attempting to compel plaintiffs to pay and deliver money and other things of value to defendant Local Union No. 75." [Complaint, R. 10.]

The Third Cause of Action alleged that "pursuant to and in compliance with the demands and threats of defendants, the plaintiffs listed below [Apex Sheet Metal Works; Atlas Heating and Ventilating Co., Ltd.; Gilmore Air Conditioning Service; Scott Co.; Western Plumbing & Heating Co., Inc., and Ace Sheet Metal Works] have paid to defendant Joint Industry Board the sums set opposite their names." [Complaint, R. 10.]

The "Stipulation of Facts" herein conclusively discloses that the six specific firms named in the Third Cause

of Action plus two others [Valley Sheet Metal Co. and Otis Sheet Metal, Inc.] are the only plaintiff employers making the questioned 2½¢ an hour payments into the Joint Industry Board Fund or who in any manner have been compelled to do so or to agree to do so. [Stipulation. Pars. 9, 10 and 11; R. 19-21.]

In the case of the plaintiff firms and corporations who have not paid nor been compelled to agree to pay anything to the questioned Joint Industry Board Fund or to any defendant, all defendants were obviously entitled to a summary judgment in their favor and an order of dismissal, under any theory of the case.

In addition to the alleged causes of action alleged herein by the plaintiff individuals, firms and corporations who are members of the Sheet Metal Contractors Association of San Francisco, the plaintiff Contractors' Association itself sought relief under Paragraph (e) of Section 302 of the Taft-Hartley Act.

The "Complaint" herein alleged generally [R. 7] that "plaintiffs are employers of employees engaged in an industry affecting commerce within the meaning of Section 302" and specifically as to the plaintiff Sheet Metal Contractors Association of San Francisco only that it is a California corporation. [R. 6.]

By their "Answer," defendants denied that the plaintiff Contractors' Association is such an "employer." [R. 12.]

The "Stipulation of Facts" disclosed merely that "Plaintiff employers are and for several years last past have been members of Sheet Metal Contractors Association of San Francisco," who have authorized such Association "to negotiate and enter into a collective bargaining agree-

ment with Local Union No. 104," in the capacity of "agent of plaintiff employers." [R. 17-18.]

Such "Stipulation of Facts" disclosed conclusively that the plaintiff Contractors' Association is not itself an "employer" within the meaning of Section 302 and has not itself paid nor been compelled to agree to pay any "money or other thing of value" to the Joint Industry Board Fund or to any defendant.

Accordingly, defendants were clearly entitled to a summary judgment against the plaintiff Sheet Metal Contractors Association and to an order dismissing the complaint in the case of said plaintiff Contractors' Association, under any theory of the case.

## III.

## The Payments Were Made Solely to the Joint Industry Board Trust Fund Established Under the Collective Bargaining Agreement Between Other Northern California Contractors and Local 75, and Were Not Made to Any Representative of Plaintiffs' Employees.

The "Stipulation of Facts" conclusively disclosed that no payment of "any money or other thing of value" has been paid or offered to be paid by any of the plaintiff employers to any of the defendants except payments by the eight employers named above to the defendant Joint Industry Board, and that no efforts to compel the making of such payments have been undertaken by any of the defendants except defendant Local 75. [R. 20-21.]

Obviously, based upon such stipulated facts under any theory of the case this action was properly dismissed as to the defendants Sheet Metal Workers International Association and its Local Union No. 104, which have neither

received, accepted, nor sought to compel the questioned payments.

Assuming for sake of argument that the eight specific plaintiff employers who made the questioned payments to the Joint Industry Board Fund herein "are engaged in an industry affecting commerce within this district" and "are employers of employees engaged in an industry affecting commerce within the meaning of Section 302" as alleged [see Complaint, Par. IV, R. 7; cf. Answer, Par. IV, R. 12; see Stipulation of Facts, Par. 1, R. 17 as to collective commerce data for all 28 plaintiff employers], the question still remains as to which of defendants are the "representatives" of their employees.

The Complaint herein alleged that "Said International Association, Local Union No. 104, Local Union No. 75 and W. R. White are representatives of the employees of plaintiffs." [R. 8.] No such allegation is made as to the defendant Joint Industry Board.

The "Answer" admitted only that "defendant Local Union No. 104 is the collective bargaining representative of the journeymen sheet metal workers and apprentices employed by the plaintiff[s]." [R. 12-13.]

The "Stipulation of Facts" establishes only "Local Union No. 104 as the representative of the employees of plaintiffs" [Par. 2, R. 17], and as discussed hereinabove that organization did not receive, accept, or seek to compel the questioned payments, and was entitled to recover a judgment of dismissal on that ground alone.

Defendant Local 75 is the representative of employees of "various employers, other than the plaintiffs doing business in the Counties of Marin, Sonoma, Mendocino, Lake, Napa and Solano, California" [Stipulation of Facts,

Par. 4, R. 18], but the employees of the eight plaintiff employers acting as sheet metal workers on jobs in such six counties of Northern California during 1955-56 "were members of defendant Local No. 104." [Stipulation of Facts, Par. 9, R. 19.]

Under any theory of the case, all defendants (other than Local 104) were entitled to be dismissed from this action on the ground that they were not shown to be "representatives" of plaintiffs' employees within the meaning of Section 302.

## IV.

## The District Court Correctly Held That the Questioned Payments to the Joint Industry Board Trust Fund Were Not Made in Violation of Section 302.

Appellants assign as their underlying specification of error below the District Court's refusal to hold that "payments by appellant employers into the Joint Industry Board Fund constituted payments of money or other thing of value by employers to a representative of their employees who are employed in an industry affecting commerce." (App. Br. p. 4.)

Although the "Complaint" herein does not allege that the defendant Joint Industry Board is such an employee representative, the District Court noted that:

> (1) "The claim of plaintiffs is that the payment, pursuant to the 'Trust Agreement of Joint Industry Board' of 2½¢ per man-hour to the Joint Industry Board Fund . . . violates Section 302 of the Labor Management Relations Act of 1947" [R. 44]; and
>
> (2) "The question for decision, therefore, is whether this agreement for payments to the Joint

> Industry Board which is composed of six employer and six union members is an agreement to pay to 'any representative of any of his employees' within the meaning of 29 U. S. C. A. 186."

Appellants take exception to the conclusion of the District Court that under the doctrine of the *Essex Transportation Company* case, *supra*, 216 F. 2d 410, payments to the Joint Industry Board fund did not constitute payments to a "representative of employees."

**A. The Rationale of the Essex Case Is Equally Applicable Here.**

The *Essex* case was a suit brought by a plaintiff union to compel payments to trustees of a pension trust based upon an *oral agreement* by the defendant employer.

There, as here, the trust fund was established by a written agreement between the union and an employers' association, specifying the purposes for which it was created, and providing for joint administration by a board of trustees, half of whom were chosen by the union and half by the employers' association.

There, as here, the employer involved was not a member of the association which negotiated the trust agreement nor a party to any contract which that association made with the union.

Contrary to Appellants' argument that the decision in the *Essex* case was based upon compliance with the welfare trust fund requirements of Section 302 (App. Br. pp. 4, 5, and 18), the Third Circuit's "decision was rested on the ground that the agreement to pay money to the six trustees was not a promise to pay to 'any representative of any of his employees' within the meaning of subsec-

tions (a) and (b)" and "the court seems to have recognized that the provision in subdivision (c)(5) of §302, excepting trust funds, was not applicable." (*Annotation; Labor Management Relations Act—§302,* 100 L. ed. 343, 345.)

Similarly, the decision of the District Court for the Eastern District of Missouri in *Rice-Stix Co. v. St. Louis Health Institute, supra,* 22 L. R. R. M. 2528, did not rest upon compliance with §302(c)(5). Holding that payments by the plaintiff employer to the defendant Health Institute (which was controlled by a joint board of trustees with the head of the union as president and the union business agent as secretary-treasurer) were not prohibited by Section 302, the opinion of District Judge Moore relied upon findings that the Institute was "not a representative of any employees of any employer" and "none of the money paid to the St. Louis Health Institute are paid to any representative of any employees of any employer."

Comparable findings by the District Court in the present case with respect to the Joint Industry Board should be affirmed.

### B. The Joint Industry Board Members Are Trustees and Not Employee Representatives.

#### 1. Existence of the Trust Relationship.

Appellants argue that no trust was created by the "Trust Agreement" establishing the Joint Industry Board because, it is contended, "no trustees are named, created or appointed" by the document. (App. Br. p. 13.)

The findings of the District Court, contrary to this contention (*i.e.*, expressly that "The Joint Industry Board

will hold the funds in question in trust for the purposes enumerated in the Trust Agreement" and impliedly that, as in the *Essex* case, "They are trustees of a fund and have fiduciary duties in connection therewith as do any other trustees," [R. 46], are amply supported by Paragraphs 7 and 8 of the "Stipulation of Facts." [R. 19.]

The stipulated facts establish that on the date of execution of the "Trust Agreement" (June 10, 1955) and before the effective date when payments to the fund commenced (July 1, 1955), the Northern California employers' association and Local Union No. 75 each respectively "nominated and appointed" six designated persons "to act on its behalf as trustees of said trust, and said persons so named accepted said nominations and appointments and were and are acting as such trustees." [R. 19.]

In any event, technical language is not necessary to the creation of a trust and the failure of the instrument to name a particular trustee or use the words "upon trust" is immaterial if it appears from the whole instrument that the intention was to create a trust. (*Estate of Clippinger* (1946), 75 Cal. App. 2d 426.)

2. Beneficial Charitable Nature of the Trust.

Appellants further contend that no trust was created because "the power reserved to the union and the association to remove and replace their representatives on the Joint Industry Board constituted by (sic) the board members *mere servants or agents.*" (App. Br. pp. 13-17, citing *Goldwater v. Altman* (1930), 210 Cal. 408, 461, and *Bernesen v. Fish* (1933), 135 Cal. App. 588.)

Decisions cited by Appellants with respect to the property interests and personal liability of certificate holders

under the form of business organization known popularly as a *"Massachusetts Trust"* are completely inapplicable to the instant case.

A "Massachusetts Trust" is a commercial organization or profit-sharing arrangement resembling a business partnership or joint stock company which was the predecessor of the business corporation. It is wholly distinguishable from the usual private or charitable trust. (25 Cal. Jur. 283; *Kadota Fig Ass'n v. Case-Swayne Co.* (1956), 73 Cal. App. 2d 796, 803; *Lincoln v. Superior Court* (1942), 51 Cal. App. 2d 61, 67.)

Thus, the *Restatement of Trusts* which covers private and charitable trusts generally, does not deal with business (Massachusetts) trusts. (*Rest. Trusts*, §1.)

The legal existence of a "trust" in the ordinary sense of that term depends primarily upon the creation of a fiduciary relationship in which one or more persons hold the legal title to property, subject to an equitable obligation to keep or use it for the benefit of other persons. (*Rest. Trusts,* §2.)

The declaration of trust, in such case, may and should provide a practical method of appointing successors and filling vacancies. (Cal. Civ. Code, §2287; see *Estate of Barnett* (1949), 97 Cal. App. 138, 143.)

The creators of such a trust have the right to appoint their own trustees and may provide a method of procedure for the appointment of a successor or successors on such terms as they choose to impose. (90 C. J. S. 141.)

As Judge Goldborough indicated in his oral opinion in *Van Horn v. Lewis, supra* (D. C. Dist. Col., 1948), 79 Fed. Supp. 541, funds created by collective bargaining agreements for the welfare of employees must be con-

strued as being *beneficial trust funds* governed by the rules applicable to *charitable trusts*. Such funds "may properly be classified as charitable trusts inasmuch as they are for social betterment as against private gain and they are of such size and the membership qualifications are so broad that the trust provides substantial benefits to the community in general." (Final Report of Subcommittee on Welfare and Pension Funds, Senate Committee on Labor and Public Welfare, 84th Cong., 2d Sess. (1956), at pp. 64-65, citing Bogert, *Trusts and Trustees,* Vol. 2-A, p. 20, and the cases of *Van Horn v. Lewis; Upholsterers International Union v. Leathercraft Furniture Co.*, and *United Garment Workers of America v. Jacob Reed's Sons, et al.,* all *supra;* see also *Annotation: Charitable Gift: Pension Fund,* 28 A. L. R. 2d 428, 431, citing *Van Horn v. Lewis* at footnote 2 thereof.)

Because of the practical and legal necessity for "equality in administration" in Joint Labor-Management Trust Funds, established by collective bargaining agreements, on a multi-employer basis, the collateral trust agreement usually makes specific provision for the replacement or substitution of trustees by the designating groups at will and merely upon adequate notice to the other trustees, as in the present case. (*Proceedings of New York University Seventh Annual Conference on Labor* (1954), p. 596.) The power to make an immediate temporary replacement of deceased trustees and an eventual permanent replacement is particularly important to maintain joint administration in Labor-Management trusts, for otherwise the surviving trustees take title and control under the general law. (Cal. Civ. Code, §§860 and 2288.)

The treatises of Bogert and Scott on Trusts detail the characteristics of beneficial trust funds or charitable trusts

which the District Court properly found to be present in the case of the Joint Industry Board Fund herein; namely,

(1) a designated trustee or trustee group;

(2) to hold certain property or funds;

(3) and apply it or its income;

(4) for enumerated socially-valuable purposes;

(5) for unidentified beneficiaries;

(6) who belong to a particular class or group of the public.

While the District Court herein concluded that the purposes set forth in the Joint Industry Board Trust Agreement "are not entirely clear" and amounted to "purposes of a rather large and vague nature," it found that they could be made clear when "read in the context of the collective bargaining agreement" as intended by the contracting parties. [R. 43 and 46.] That which can thus be made certain is certain under the law. (Cal. Civ. Code, §3538.) When properly defined in this way, the purposes of the Joint Industry Board Trust Fund appear to include [R. 43-44]:

(1) "the establishment and administration of a *joint arbitration committee* to settle all grievances arising between the parties [i.e., the Northern California employers' and Local Union #75], or any of them or any of the members of either of them, whether or not related to the collective bargaining contract";

(2) "the establishment, supervision and administration of a *joint apprenticeship program,* including a training program and a program for attracting desirable persons to the industry";

(3) " 'to assist and aid' the industry in *maintaining high standards of skill,* and to render assistance

to employers, unions, and individuals in the industry for the purpose of effectuating high standards in the industry";

(4) "to carry on *publicity and lobbying for the benefit of the industry.*"

Such activities for the direct benefit of all employees and their employers engaged in the Sheet Metal Industry in Northern California and the indirect benefit of the community at large through the promotion of industrial peace, increased availability and skills of qualified tradesmen, and training of young persons in a recognized craft are clearly "charitable purposes" under the law of trusts.

That term as used in the law of trusts has a very broad meaning, based upon the definition of charitable purposes in the preamble to the old English Statute of Charitable Uses enacted in 1601. (Stat. 43 Eliz., Ch. 4; 7 Pickering's Eng. Stats., p. 43; see *Rest. Trusts,* §368, and decisions in *Estate of Tarrant* (1951), 38 Cal. 2d 42, 46, 237 P. 2d 505; 28 A. L. R. 2d 419, and *Estate of Henderson* (1941), 17 Cal. 2d 853, 857. Also see *Annotation: Charitable Gift—Pension Fund, supra,* 28 A. L. R. 2d at p. 429, quoting the Restatement of Trusts, §368, Comment a.) This Elizabethan Statute arose out of economic dislocations caused by the transition to expanding mercantilism in Tudor times, when hordes of work-seeking laborers were idle and the trade guilds, languishing themselves, no longer could aid their distressed members. (*Annotation: Charitable Trust—Validity,* 12 A. L. R. 2d 849, 853-854.)

It has been explained, however, that under modern conditions, "Relief of poverty is not a condition of charitable assistance. If the benefit conferred has a sufficiently

widespread social value, a charitable purpose exists," as where "its aims and accomplishments are of religious, educational, political or general social interest." (*Estate of Henderson, supra,* 17 Cal. 2d at p. 857, citing *Rest. Trusts,* §§368 and 374; and *Collier v. Lindley* (1928), 203 Cal. 641; see also *Estate of Tarrant, supra,* 38 Cal. 2d at p. 50.)

As to what other purposes are of widespread social value, no definite rule can be laid down. (*Rest. Trusts,* §368, Comment b.) The Restatement of Trusts declares that "Other purposes of the same general character are likewise charitable. The common element of all charitable purposes is that they are designed to accomplish objects which are beneficial to the community."

Associate Justice Spence thus wrote for a unanimous California Supreme Court in the 1951 *Tarrant* case, *supra,* 38 Cal. 2d at p. 46—

> "Since the enactment of the Statute of Charitable uses in 1601 . . ., provisions for the 'supportation, aid and help of young tradesmen, handicraftsmen and persons decayed' have been recognized as charitable in their design to 'accomplish objects which are beneficial to the community.' (Rest., Trusts, §368.) The scope of the word 'charity' changes and enlarges with the needs of men and must advance with the progress of civilization so as to encompass varying wants of humanity properly coming within its spirit." (Citing *People v. Dashaway Assn.* (1890), 84 Cal. 114, 122, and *Rest. Trusts,* §374.)

In *Collier v. Lindley, supra,* that same Court unanimously upheld the validity of a trust instrument as creat-

ing a charitable trust which included among its main purposes the following (203 Cal. at p. 646; emphasis added):

(1) "To *improve working conditions* for men, women and children by:

(a) Investigating the *causes of industrial accidents and diseases;* including, among other things, the relation of the *hours of labor* to the *health of workers,* and the *conditions under which work is performed;*

(b) Helping, by all lawful means, to prevent the continuance of conditions inimical to the *health, welfare and safety of workers,* and helping to secure *better working conditions* for them."

(2) "To *improve living conditions of the working people* . . . by any legitimate means."

(3) "To *induce, encourage and support industrial cooperation* to the end that *justice* may be done *to employer and employee alike* and harmony be established and maintained between them *and industrial hatred and strife abolished* thereby benefiting mankind in general."

(4) "To encourage and give educational opportunities for the *study of* . . . *Industrial problems* with special reference to improvements in living and working conditions of the working people."

*Estate of Murphey* (1936), 7 Cal. 2d 712, 714, followed the doctrine of the *Collier* case, *supra,* by holding the following purposes within the broad definition of "charitable purposes" in the case of a "political" organization for the benefit of members of a particular religious faith:

(1) "To *safeguard the civil, political, economic and religious rights*" of members of the particular faith;

(2) "To *develop* an articulate, intelligent, widespread and compelling *public opinion* touching . . . interests and problems" of such members;

(3) "To *gather and disseminate information* concerning such interests and problems, and to *foster the free and open discussion* of them."

(4) "To *secure and maintain equality of opportunity*" for such members;

(5) "To secure . . . in every lawful manner . . . *effective remedies, assistance and redress in all cases of injustice, hardship or suffering* arising out of discriminatory measures or . . . the violation or denial of their lawful rights against such members."

*People v. Cogswell* (1928), 113 Cal. 129, 134 (cited by the California Supreme Court in the *Collier* and *Henderson* opinions, both *supra*), upheld a trust as being for valid charitable purposes where its object was to provide *"practical training in the mechanical arts and industries."*

The definition of "charitable uses cannot be limited to any narrow and stated formula." While the "underlying principle is the same," its application is as varying as the wants of humanity" and "where new necessities are created new charitable uses must be established." (*People v. Dashaway Ass'n, supra.*)

That the purposes of a joint Labor-Management industry organization of the type here involved are "designed to accomplish objects which are beneficial to the community" (*Rest. Trusts,* §368) was recognized by the Cali-

fornia District Court of Appeal in *Bay Area Painters Joint Committee v. Orack, supra,* 102 Cal. App. 2d at pp. 85-86, when it stated:

> "It has long been recognized, and it is clearly a desirable situation to achieve, that *employers and unions work together for stability in the industry.* . . . [I]f an employer enters into an agreement with the union and fails to conform to the working conditions, it would result in unfair competition among other employers, and would also create *unrest, labor disturbances, and many other situations that would work to the disadvantage of public welfare.* It is therefore proper for associations of employers to agree on methods of procedure . . . and a non-member who adheres to the agreement may well join in such an agreement for the purpose of producing stability in the industry. It follows as a matter of course that there is a certain cost involved in supervising and policing the industry. It is proper to be borne by a charge placed on the employers. . . . [A]greements entered into between employers and unions for the bettering of conditions in the industry, even where the employer is called upon to bear a charge involved therein, do not constitute illegal monopolies or restraints of trade. . . . To the contrary, . . . *provisions that would produce harmony and peace in an industrial activity are of the type that ought to be encouraged, and the courts should make effort to see that they are lived up to for the purpose of producing industrial peace that would so benefit the community.*" (Emphasis added.)

### 3. Scope of the Trust Purposes.

The District Court herein found (1) that "the purposes enumerated in the Trust Agreement, while in certain cases auxiliary to collective bargaining procedures, go beyond them and are not confined by the terms of the collective bargaining agreement except in case of conflict" [R. 46]; (2) that these purposes include such broad activities as "a joint arbitration committee"; "a joint apprenticeship program"; technical "assistance to employers, unions, and individuals in the industry"; and "publicity and lobbying for the benefit of the industry" [R. 43-44]; and (3) that the "Joint Industry Board will hold the funds in question in trust," subject to expenditure for these enumerated purposes only. [R. 46.]

Appellants attack these findings by arguing that the "legal effect" of the "Trust Agreement" is that "the payments into the Joint Industry Board Fund were exactly the same as payments into a *joint bank account* in the names of the union and the association" (App. Br. p. 17). They contend that the "purposes of the fund are so broad and vague the moneys can be used for *any purpose representatives of both sides agree upon*" (*Ibid.*, p. 13) and "*without violating* the so-called 'trust agreement,' the monies in the fund could be applied to a variety of purposes which the union as such desires or which are to the advantage or benefit of the *union as such.*" (*Ibid.*, p. 5, see also pp. 7, 12, 19, 20.) In summary, "Appellants contend that the very *broad scope* of purposes and activities [of] the Joint Industry Board together with the *degree of control* exerted by the union over half of the trustees is sufficient to constitute the employer contribu-

tions payments of monies or other thing of value to a representative of their employees." (*Ibid.*, p. 6, see also pp. 16-17, 28.)

Certainly, the concededly broad scope of the purposes and activities of this Joint Industry Board does not affect its status as a valid beneficial or charitable trust. If the founders describe the "general nature" of such a trust, they "may leave the details of the administration to be settled by trustees," subject to judicial supervision, if necessary. (*Russell v. Allen,* 107 U. S. 163, quoted in *People v. Cogswell, supra,* 113 Cal. at p. 137.)

In *Collier v. Lindley, supra,* 203 Cal. at pp. 655-656, the Appellant unsuccessively urged that the attempted trust foundation was wholly invalid because "the powers and functions with which the trustees thereof are invested are too indefinite to justify the court in upholding it and by so doing is creating in them a perpetuity with practically unlimited powers." Read as a whole, the manifest object of the creators of that trust was to bring about the adoption of concrete legislation and certain particular social and economic reforms and to encourage and support such social and economic practices as "a cooperative system of marketing" and "industrial cooperation as between employers and employees" by directing the trustees to conduct investigations, provide educational opportunities, disseminate information, and use other lawful means which in the judgment of the trustees might be useful in carrying out the purposes of the trust. The fact that the powers of the trustees were not more exactly defined did not render the trust itself invalid.

In the present case, as in *Collier v. Lindley,* 203 Cal. at p. 652, the main attack which the appellants make upon

this trust is not directed against "the expressed purposes of its creation taken as a whole," which concededly may be "laudable," "desirable" or "beneficial." (App. Br. pp. 7, 22 and 23.) Rather this attack consists of the above-mentioned "charge of indefiniteness" levelled against the provisions outlining the purposes of the trust and the powers and functions of the trustees, namely, that these provisions are "too indefinite."

The extremely wide choice and broad discretion vested in the trustees which is inherent in every charitable trust does not create a vice in the trust which makes it too vague, uncertain and indefinite to be upheld by the courts, unless the trust is attempted to be created by such equivocal or meaningless language, that the intent of the trust instrument cannot be made reasonably certain upon interpretation according to law. (*Estate of Bunn* (1949), 33 Cal. 2d 897.)

Examination of the Trust Agreement herein reveals that there is no merit to Appellants' argument that the "Trust Agreement" is too indefinite because it supposedly gives the union "a general power of appointment or the right to designate how the money shall be spent" (App. Br. p. 27). or at least, gives the joint trustees designated by the union and the employers' association "almost unlimited authority to determine how the money should be spent." (App. Br. p. 12, see also pp. 23 and 28.) In truth, Joint Industry Board funds could not conceivably be used to defray general union expenses or otherwise diverted to the union as an indirect payment without violating the Trust Agreement.

The District Court herein correctly ruled that "The Joint Industry Board is not a part of the union, and

its governing agreement expressly provides for the separate character of the Board from either of the parties, and expressly preserves their duties and relationships with respect to each other and each of them with respect to their members. The agreement provides for a careful accounting and separate deposit system for Joint Industry Board funds from those of the union. If the employer members refuse to sanction an expenditure, for any reason, there is a provision for arbitration in the agreement." [R. 47.]

Moreover, since "[d]ecisions of the Board are made by a concurrence of a majority of the employer members with a majority of the union members," the District Court properly concluded that "the power to expend the funds contributed by the employers resides in the Board, and is thus dependent upon the approval of the employer members." [R. 43; Cf. App. Br. pp. 21-22.]

Insofar as Appellants argue that there exists the possibility of diversion of funds to the union even in the face of these express safeguards in the form of joint control and mutual administration by an equal number of Employer-appointed and Union-appointed trustees, the District Court fully answered that argument by pointing out that if the joint trustees used or attempted to use the fund, directly or indirectly, for such unauthorized purposes, a court of equity would "enjoin the trustees from making the improper expenditures." [R. 47; citing *Upholsterers' International Union v. Leathercraft Furniture Co., supra,* 82 Fed. Supp. 570, 573. Cf. App. Br. pp. 6-7.]

Under the general law of trusts, a trustee "must fulfill the purpose of the trust as declared at its creation." (See

Cal. Civ. Code, §2258.) In the case of charitable trusts in particular, if the trustees "in any way abuse their trust, equity will correct the abuses and remove the offenders" (*People v. Cogswell, supra,* 113 Cal. at pp. 141-142), but the mere possibility that such abuses could have taken place will not invalidate the trust. Courts of equity possess enlarged judicial powers in giving effect to trusts for charitable uses by directing trustees to fulfill the purposes declared by its creators in the trust instrument. (*Collier v. Lindley, supra,* 203 Cal. at pp. 654-655.)

Since "the rules applicable to charitable trusts undoubtedly apply" to beneficial funds established through collective bargaining, if the required majority of the joint trustees "should undertake to misuse the fund in such a way that it obviously would not be in accordance with law, or with the agreement," any interested person "will have a right to come into the Court and ask that the Trustees be directed how they should use the fund." (*Van Horn v. Lewis, supra.*) The trustees of such a fund "have fiduciary duties in connection therewith as do any other trustees." (*United Marine Division v. Essex Transportation Co., supra.*) Abuses in the administration of such funds will not be tolerated by the courts. (*Upholsterers' International Union v. Leathercraft Furniture Co., supra.*)

Even where the collateral trust instrument relating to a beneficial fund established through collective bargaining expressly confers "full authority" upon the joint trustees seemingly amounting to "unlimited discretion," the courts will still resort to the trust agreement itself "to define the limits of a trustee's powers" which are necessarily "subject to the stated purposes of the fund." If the

trustees go outside the stated purposes of such a fund, "a court of equity can always intervene to control such an unreasonable exercise of discretion." (*Forrish v. Kennedy* (Pa. Sup. Ct., 1954), 105 A. 2d 67, 25 C. C. H. Labor Cases, Par. 68,434, cited in Final Report of Subcommittee on Welfare and Pension Funds, Senate Committee on Labor and Public Welfare, 84th Cong., 2d Sess. (1956), pp. 65-66.)

Thus, in Labor-Management trust funds, as in other trusts, the "discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court." (Cal. Civ. Code, §2269.)

Such being the case, the question arises whether the stated purposes of the Joint Industry Board Fund trust agreement involved herein authorize payment of any money or other thing of value to the union by the employers.

Appellants assert that "the purposes specified include the expenditure of assets of the fund for the purposes of *defraying the cost of at least some activities normally carried on by the union*" (App. Br. p. 13), namely, "settling disputes, arbitrating, and administering an apprenticeship program." (App. Br. p. 5, see also pp. 24-26.)

Insofar as the administration of an apprenticeship program is concerned, Appellants cite no authority for the proposition that this is a union function normally paid for by the union.

Faced with a "steadily decreasing number of labor organizations maintaining an apprenticeship system" so that by 1936 most national unions did *not* provide in their constitutions or agreements for the training of apprentices

(see Slichter, *Union Policies and Industrial Management* (1941), pp. 9-10; 5 *Industrial and Labor Relations Review,* p. 50; *Handbook of American Trade Unions,* U. S. Bureau of Labor Statistics Bulletin No. 618 (1936); Motley, *Apprenticeship in American Trade Unions,* pp. 53 *et seq.*). Congress decided in 1937 that "the training of all-around skilled workers is a matter of concern to all of the people" and "therefore passed an act authorizing the Secretary of Labor to set up standards to guide industry in employing and training apprentices; *to bring management and labor together to work out plans for the training of apprentices;* to appoint such national committees as needed; and to promote general acceptance of the standards and procedures agreed upon." (*The National Apprenticeship Program,* U. S. Dept. of Labor. Apprentice-Training Service (1947), p. 1; emphasis added. See Public Law 308, 75th Cong.; 50 Stats. 664-665; 29 U. S. C., §§50-50b, incl.)

To carry out these functions, the Apprentice-Training Service was established and the Federal Committee on Apprenticeship, composed of representatives of Management, Labor and interested Government agencies, was appointed. In the Construction Industry, a General Committee on Apprenticeship, consisting of leading representatives of contractors' associations and labor organizations, acts as a coordinating body and promotes the development of national and local apprentice training programs. (*Ibid.*)

In California, the State Legislature adopted the Apprentice Labor Standards Act of 1939 (Stats. 1939, Ch. 220, pp. 1472-1476; Cal. Labor Code, §§3070-3090 incl.), creating a tripartite Apprenticeship Council, composed of representatives of employers, employees, and the

general public, and authorizing the selection of *"joint apprenticeship committees"* by employers or employer associations and employee organizations on a State-wide or local area basis.

The administration of such a "joint apprenticeship program" and establishment of such "Apprenticeship Standards" by the Joint Industry Board pursuant to the Trust Agreement herein [Par. A, subp. 4; R. 30] does not constitute taking over some of the functions of the union, as contended by the Appellants. (App. Br. p. 5.)

It is undisputed that the statutory definition of collective bargaining under Section 8(d) of the amended National Labor Relations Act (29 U. S. C., §158(d)) includes the initial handling of grievances and disputes related to the administration and enforcement of an existing collective bargaining agreement. (See *N. L. R. B. v. F. W. Woolworth Co.* (1956), 352 U. S. ....., 1 L. ed. (2d) 235, reversing 235 F. 2d 319, which denied enforcement of 109 N.L.R.B. 196.)

Likewise, it is undisputed that union functions include "dealing with employers concerning grievances, labor disputes . . ." and the like (29 U. S. C., §152(5)), "with the end in view of arriving at a reasonable and amicable adjustment of such matters." (*Yellow Cab Operating Co. v. Taxi-Cab Drivers Local Union* (D. C. Okla., 1940), 35 Fed. Supp. 403.)

*Adjustment of grievances and disputes by the union through collective bargaining* with the individual employers is wholly separate from the functions of *conciliation or mediation* [Trust Agreement, Par. A-2; R. 30] and *arbitration* [Trust Agreement, Par. A-3; R. 30] through the facilities provided by the Joint Industry Board.

With respect to this type of adjustment of grievances and disputes through collective bargaining conferences, the National Labor Relations Act as amended expressly provides that:

> (1) "an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay" (Section 8(a)(2); 29 U. S. C. §158(a)(2)) thus authorizing "payment not only to individual employees, but also to employees acting in a representative capacity in conferring with the employer." (House Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 45; see also *Matter of Remington Arms Co., Inc.* (1945), 62 N.L.R.B. 611, and *Coppus Engineering Corp. v. N. L. R. B.* (C. A. 1st, 1957), ..... F. 2d ....., 39 L.R.R.M. 2315.)
>
> (2) "any individual employee or a group of employees shall have the right to present grievances to their employer and have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect: *Provided further,* that the bargaining representative has been given opportunity to be present at such adjustment." (Section 9(a); 29 U. S. C. §159(a); House Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 46; see *Hughes Tool Co. v. N. L. R. B.* (C. A. 5th, 1945), 147 F. 2d 69.)

In adopting the statutory definition of collective bargaining contained in Section 8(d), relied upon by Appellants herein (App. Br. p. 25), the Conference Committee specifically noted that the Taft-Hartley bill in its final form "omits from the Senate amendment words that were contained therein which might have been construed to

require *compulsory settlement of grievance disputes* and other disputes over the interpretation or application of the contract." (House Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 35; emphasis added.)

While the employer's duty to bargain collectively with the union includes the handling of grievances and disputes by meeting and conferring in good faith in an effort to deal with their merits, Section 8(a)(5) of the Act (29 U. S. C. §158(a)(5)) does not require the submission of the grievance or dispute to arbitration as the final step of the grievance procedure. Thus, in *Matter of Textron Puerto Rico (Tricot Division)* (1953), 107 N.L.R.B., No. 142, the National Labor Relations Board declared:

> ". . . the record establishes at the most that [the Employer] refused to comply with the Union's request that [the Employer] submit to arbitration the dispute arising out of that discharge. Whether or not such refusal constituted a breach of the collective bargaining agreement, it did not, in itself constitute a violation of Section 8(a)(5) and (1) of the Act. Accordingly, we shall dismiss the complaint."

Section 201 of Title II of the Labor Management Relations Act (29 U. S. C. §171) expressly distinguishes between "the processes of conference and collective bargaining between employers and the representatives of their employees," on the one hand, *and* "facilities for conciliation, mediation and voluntary arbitration" or "such methods as may be provided for in any applicable agreement for the settlement of disputes" and "the final adjustment of grievances," on the other hand.

Section 203 of that same Title of the 1947 Act declares that "Final adjustment by a method agreed upon by the parties" is "the desirable method for settlement of grievance disputes." (29 U. S. C. §173(d).) The Senate version of the Act authorized the Federal Mediation Service to seek to induce the parties to submit such disputes to voluntary arbitration and provided for payment by the United States of not to exceed $500 as a contribution to *defray the cost of such an arbitration proceeding,* but this feature was eliminated in conference. (House Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 62; S. Rept. No. 105, 80th Cong., 1st Sess., p. 29.)

In the case of so-called jurisdictional disputes, Congress adopted the same policy favoring resort by the parties to "agreed upon methods for the voluntary adjustment of the dispute" (Sec. 10(k); 29 U. S. C. §160(k)), and, in conference, eliminated the provisions of the Senate version which authorized the National Labor Relations Board to appoint an arbitrator to decide the issues. (House Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 57; Senate Rept. No. 105, 80th Cong., 1st Sess., p. 27.)

In accordance with Title II of the Labor Management Relations Act, the Federal Mediation and Conciliation Service has recognized "voluntary arbitration as the private judicial system of the parties," so that employers and unions "must assume broad responsibility for the success of the particular arbitration procedures they have chosen." The Service has concluded that "Voluntary arbitration is a supplement, in appropriate cases, to free collective bargaining" frequently constituting "a desirable alternative to economic strife." (*"Statement of Arbitration Functions and Facilities"* (1948), and *"Arbitration Policies, Functions, and Procedures"* (1954), of the Fed-

eral Mediation and Conciliation Service, summarized in 5 C. C. H. Labor Law Reports at page 51,042. See also *"Grievance Mediation under Collective Bargaining,"* in 9 *Industrial and Labor Relations Review,* 200, 204.)

From the foregoing it may be seen that the District Court herein was fully justified in concluding, as it did, that the procedures for disputes settlement and joint arbitration contemplated by the Joint Industry Board Trust Agreement are "auxiliary to collective bargaining procedures" and "go beyond them" so that in this respect, as in all others "The Joint Industry Board is not a part of the union." [R. 46-47.]

There is no support in this record for Appellants' claim that before the establishment of the Joint Industry Board "the union has handled all disputes and grievances arising out of the contract *at its own expense,* including arbitration." (App. Br. p. 25.) Neither does the Trust Agreement provide in Paragraph F [R. 32], or anywhere else, as claimed by Appellants, that the employers shall pay "the entire cost of 'settlement of any and all disputes' . . . and the cost of arbitration. . . ." (*Ibid.,* p. 26.)

A reasonable construction of the purposes of the Joint Industry Board Fund as enumerated in the Trust Agreement is that the Joint Board will "aid in the settlement of any and all disputes"; "administer a joint arbitration committee"; and "provide further arbitration procedures" [R. 30] as a supplementary or auxiliary procedure to free collective bargaining procedures between the union and the individual employers.

The District Court adopted such a reasonable construction when it found that the Joint Industry Board's "governing agreement expressly provides for the separate

character of the Board from either of the parties, and expressly preserves their duties and relationships with respect to each other and each of them with respect to their members." [R. 47.]

The union's function in handling disputes and grievances as the collective bargaining representative of its membership was not *"transferred* to the Joint Industry Board" (Cf. App. Br. p. 25), nor does the payment of expenses in connection with separate Joint Industry Board functions amount to "paying the cost of a portion of the functions normally paid for by the union" comparable to payments of "rent for the union hall and offices" or of "the salaries of their officers," as Appellants contend. (Cf. App. Br. p. 26.)

4. Beneficiaries of the Trust.

The chief difference between an ordinary private trust and a beneficial fund or charitable trust is that in the latter case the beneficiaries are unspecified. (*Bauer v. Myers* (C. A. 10th), 244 Fed. 902, 911.)

This "element of indefiniteness in the beneficiaries of a charitable trust is not only not an objection to its validity, but, as a rule, is of the essence of all charitable trusts of a public or *quasi*-public character." (*Collier v. Lindley, supra,* 203 Cal. at p. 652; see also *Estate of Henderson, supra,* 17 Cal. 2d at p. 857; *People v. Cogswell, supra,* 113 Cal. at pp. 136-137, citing *Russell v. Allen,* 107 U. S. 163; and *Faye v. Howe* (1902), 136 Cal. 599, 601, quoted with approval in *Estate of Bunn, supra,* 33 Cal. 2d at p. 901. The rule is also discussed in *Rest. Trusts,* §375 and 30 Cal. L. Rev. 218.)

The unascertained beneficiaries of such a trust must constitute a sufficiently large class of persons so that the

community has a stake in the enforcement of the trust and there is a public interest to be served thereby. Those benefited by the trust may include such an undefined segment of the population as "the working classes" (*Collier v. Lindley, supra*), or a more definite group such as members of particular labor organizations or employees of particular major employers or major industries. (*Estate of Tarrant, supra;* see *Annotation, supra,* 28 A. L. R. 2d at p. 430.)

The fact that there are no specific persons interested in such a trust as individually-named beneficiaries "does not place it beyond the protection of a court of equity." The enforcement of the requirements of the charitable trust and an accounting of the corpus "may be compelled by the Attorney General." (*Estate of Bunn, supra,* 33 Cal. 2d at p. 904; *People v. Cogswell, supra,* 113 Cal. at p. 136.)

The general rules as to enforceability of beneficial charitable trusts which admittedly are applicable to pension or medical and hospitalization trusts established by collective bargaining agreements (see App. Br. pp. 17 and 19) have been well summarized by the Final Report of the Senate Subcommittee on Welfare and Pension Funds (*supra,* pp. 64-66) in the following fashion:

> (1) "If it may be assumed that welfare and pension trusts arising out of collective bargaining are, in fact, in the nature of beneficial charitable trusts, then enforcement of the rights of the beneficiaries has been a responsibility of the State since 1601 when the Statute of Charitable Uses was enacted by Parliament (43 Eliz., Ch. 4)."
>
> (2) In some States, "an action may be brought by the attorney general upon his own information

or upon complaint of any interested party (which would include a beneficiary or beneficiaries) for the enforcement of a charitable trust."

(3) "It is generally held that a person who has a special interest in the performance of a charitable trust can bring an action for its enforcement." (Citing Scott on Trusts, p. 2054.)

(4) The "States already have ample authority to act through their attorneys general following the commission of a breach of trust or the commission of any act of malfeasance in the administering of trust funds located within the State."

(5) "Federal courts also have warned that abuses . . . will not be tolerated." (Citing *Upholsterers' International Union v. Leathercraft Furniture Co., supra.*)

(6) Courts "will look with favor upon the petition of a beneficiary even though his right to benefits has not vested."

(7) The "purposes of a trust cannot be frustrated at the whim and caprice of the trustees" and "beneficiaries of welfare and pension trust funds established through collective bargaining have a means of protecting their rights and interests through the courts."

Appellants herein concede that in the *Essex* case, *supra,* 216 F. 2d 410, involving a pension trust, "it would be impossible for the trustees to apply any of the moneys in the trust for the benefit or advantage of the *union as such* without violating the specific terms and provisions of the trust" (App. Br. p. 5) and likewise in the *Upholsterers* case, *supra,* 82 Fed. Supp. 570, involving a union-administered health and welfare fund, "no part of this

fund could be diverted to the benefit or advantage of the union as such *without violating the trust agreement itself.*" (*Ibid.,* p. 7.)

In the case of a pension trust, as in the *Essex* case, or a medical and hospitalization trust, as in the *Upholsterers* case, Appellants recognize that the employees as beneficiaries could have gone to a Court of Equity to enforce their rights and prevent a diversion of the trust fund to the union. (*Ibid.,* pp. 17 and 19.)

The decision of the District Court here under review properly held that this same doctrine applies to the Joint Industry Board. Although "chosen half and half by the employers' association and this union," the individuals so designated "when set up as a board, as they were in this case," were declared to be "not acting as representatives of either union or employers" but rather as "trustees of a fund" with "fiduciary duties" enforceable by a court of equity. [R. 46.]

Appellants are not at all accurate when they state that "There were no beneficiaries of the Joint Industry Board Fund except the *union* itself and the *employer association.*" (App. Br. p. 17.)

The Trust Agreement of the Joint Industry Board Fund discloses on its face that it provides for:

> (a) assistance in settlement of disputes for the benefit of Union members, Employer's Association members and "all other employers of union members who are signatories to agreements with the union" [Par. A-2; R. 30];
>
> (b) apprenticeship standards and training for the benefit of "persons of good moral character, ambition and competency" [Par. A-4; R. 30];

(c) assistance and aid in maintaining a "high degree of skill" for the benefit of those persons engaged in "the Heating and Sheet Metal Industry" in Northern California [Par. A-5; R. 30; Cf. App. Br. p. 19];

(d) a forum for discussion of methods of joint cooperation for the benefit of "Management and Labor" in the said Industry [Par. A-5; R. 30-31; Cf. App. Br. p. 19];

(e) counsel, advice and other assistance to "individual members of the Union and all employers who are signatories hereto" in the said Industry [Par. A-5; R. 31; Cf. App. Br. p. 20];

(f) liaison with "representatives of public and quasi-public bodies or groups or associations in the Construction Industry or allied fields" for the benefit of persons engaged in the Heating and Sheet Metal Industry in the Northern California counties [Par. A-6; R. 31];

(g) advocacy and promotion of legislation "beneficial" to persons engaged in "the Heating and Sheet Metal Industry" of the State of California [Par. A-6; R. 31; Cf. App. Br. pp. 20 and 24];

(h) dissemination of public information and public relations activities for the benefit of persons engaged in "the work of the Heating and Sheet Metal Industry" [Par. A-6; R. 31; Cf. App. Br. p. 23].

We submit that the individual employees, employers, and applicants for employment now engaged or hereafter engaged in the "Heating and Sheet Metal Industry" in Northern California are the direct beneficiaries of this

Fund and constitute a sufficiently broad class of persons within the community with a special interest in the performance of this trust to permit enforcement of the express trust provisions by the courts to protect their interests.

Even if there were "no class of persons particularly interested in such a trust," Appellants would not be justified in concluding that "There was *no one* to challenge whatever disposition might be made of the monies in the fund." (App. Br. p. 20.) Such a trust is affected with a public interest which can be enforced by the Attorney General of the State of California who may secure an accounting of all expenditures so that Appellants' "concern that there is *no one* 'to keep the trustee honest' has no substantial foundation." (*Estate of Bunn, supra*, 33 Cal. 2d at p. 904; emphasis added. As to the remedy of an accounting, Cf. App. Br. p. 7, par. 2.)

Under all of the foregoing circumstances (regarding the establishment of the trust fund; its enumerated purposes; the powers, duties and fiduciary obligations of the trustees; and the beneficial interest of the individual employees and employers in the fulfillment of the purposes of the trust fund by the trustees in accordance with the requirements of the Trust Agreement), the District Court could not "hold that the payments in question are payments 'to any representative' . . ." and therefore properly held that the "union members of the Joint Industry Board, in that capacity, are not 'representatives' of the employees within the meaning of 29 U. S. C. 186." [R. 48.]

## V.

## In the Absence of Any Actual or Threatened Violations of Section 302(a) and (b), the District Court Lacked Jurisdiction to Grant Any Relief to Appellants.

Section 302(e) of the Labor Management Relations Act as set forth in 29 U. S. C. §186(e) provides that—

> "The district courts of the United States . . . shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions of sections 101-115 of this title."

Congress thus authorized injunctive relief against violations of Section 302(a) and (b) of the Taft-Hartley Act, notwithstanding the restrictions upon the equitable jurisdiction of the District Court in "labor disputes" contained in the provisions of Sections 6 and 20 of the Clayton Act (15 U. S. C. §17 and 29 U. S. C. §52) and the provisions of the Norris-LaGuardia Anti-Injunction Act (29 U. S. C. §§101-115).

As District Judge Kirkland clearly explained the limited jurisdiction conferred by Section 302(e), in *Dunbar Company v. Painters District Council, supra* (D. C. Dist. Col., 1955), 129 Fed. Supp. 417:

> "Modifying the general denial to federal courts of injunctive powers in labor disputes, Congress has seen fit in this Act to open the door just a bit and to define a narrow path for federal courts to trod. . . .

"So there is this very narrow opening in the theretofore solid wall of denial of the power of injunction in cases of labor disputes. . . .

"To enforce it [Section 302] a criminal penalty was attached, because . . . there was potential vice in these funds not being properly deposited, not being properly supervised, not being properly audited, and in fact they could become a slush fund, they could become the source of crime, embezzlement, and they might be used for many improper things. . . .

"That language [Section 302(a) and (b)] was very deliberately intended to prevent kickbacks, prevent bribes, prevent things which make for labor racketeering. And . . . beyond the penalties which are purely criminal, there could be injunctive powers for quick and speedy remedy."

In the absence of actual or threatened payments or agrements for payments to a "representative" of his employees by one or more employers, in contravention of Section 302(a) and (b), Congress did not intend to confer general equitable jurisdiction upon the District Courts to grant injunctive relief by virtue of any labor dispute arising over employer opposition to and criticisms of a trust fund established through collective bargaining. (Compare *Statements of Senators Thomas and Pepper,* 5/7/47, 93 Cong. Rec. 4680, and *Statement of Senator Morse,* 5/8/47, 93 Cong. Rec. 4751.)

## Conclusion.

The defendant Joint Industry Board of the Heating and Sheet Metal Industry of Marin, Sonoma, Mendocino, Lake, Napa and Solano Counties is a beneficial trusteeship for enumerated purposes affected with a public interest, established for the benefit of individuals engaged as employers, journeyman employees and apprentice employees in said Industry.

The defendant W. R. White in his capacity as one of six persons appointed by defendant Local No. 75, who, together with six other persons appointed by Associated Heating and Sheet Metal Contractors, Inc., administer the Joint Industry Board Trust Fund, is a trustee for a "charitable trust" with appropriate fiduciary obligations, and subject to the supervision and control of a court of equitable jurisdiction.

Neither said Joint Industry Board, nor any of its twelve members in their capacities as joint trustees, are "representatives" of any employees of Appellants within the meaning of Section 302 of the Labor Management Relations Act, 1947.

Financial contributions to said Trust Fund by the eight San Francisco Sheet Metal contractors among the Appellants herein (pursuant to their agreement with defendant Local No. 104 to be governed by the "established working conditions" of defendant Local No. 75 when employing members of Local No. 104 in the six Northern California Counties) do not constitute payments of " 'any money or other thing of value' to any 'representative' of their employees" in violation of Section 302(a).

The receipt or acceptance of such sums from these eight plaintiff employers by the defendant Joint Industry Board was not made "unlawful" by Section 302(b).

The making of such financial contributions by some of the Appellants and the receipt thereof by one of the Appellees did not constitute a crime made punishable by Section 302(d).

In the absence of any violations of Section 302(a), (b), and (d), no jurisdiction exists to grant an injunction against such payments by virtue of Section 302(e). Jurisdiction to grant the relief sought by Appellants herein was precluded by the Norris-LaGuardia Act. (29 U. S. C. §§101-115.)

Under the undisputed facts and circumstances of this case, the orders of the District Court granting defendants' motion for summary judgment and denying plaintiffs' motion for summary judgment were free from error, and the summary judgment of the District Court dismissing plaintiffs' complaint and denying injunctive relief, as prayed for, should be affirmed.

DATED: Los Angeles, California, March, 1957.

Respectfully submitted,

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By ROBERT W. GILBERT,

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